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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/622,562

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Peter Ho

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EXAMINER

PATEL, NIHIR B

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

02/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/622,562	Applicant(s) HO, PETER	
	Examiner NIHIR PATEL	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-6, 8-11, 13-23, 25-31 and 33-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-6, 8-11, 13-23, 25-31 and 33-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on October 20th, 2009 have been fully considered but they are not persuasive. The applicant traverses the 35 U.S.C. § 112, first paragraph on claims 2-6, 8-11 and 36-41. The applicant argues that paragraph [21] of the specification teaches the recited limitation "a crossover strap extending from one of the contoured panels to another contoured panel". The examiner disagrees with the applicant's argument. Paragraph [21] of the specification and figure 2 recites "the crossover strap 56 extends from one of the panels and in user extends to the other panel by way of passing through opening 62. That is not extending from one of the panels to the other structurally.

The applicant further argues that paragraph [20] of the specification teaches the recited limitation "headpiece". The examiner disagrees with the applicant's argument. Paragraph [20] does not recite that the headgear is comprises of the headpiece wherein the headpiece comprises contoured panels 58 and joining pieces 32 and 46 and connecting straps 36, 38 and 68 as the applicant argues. Therefore rejection under 35 U.S.C. § 112, first paragraph still stand on claims 2-6, 8-11 and 36-41 as stated in the previous office action dated July 28th, 2008.

The applicant further argues that Lomas fails to teach a front joining piece, a rear joining piece and/or contoured panels extending from a rear joining piece. The examiner disagrees with the applicant's argument. Lomas does teach a front joining piece 20 (see figures 3 and 4), a rear joining piece 27 (see figures 3 and 4) and/or contoured panels (the area between 20 and 27 is defined as the contoured panels) extending from a rear joining piece to a front joining piece (see figures 3 and 4).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims **2-6, 8-11 and 36-41** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support for the limitation "a crossover strap extending from one of the contoured panels to another contoured panel". Paragraph [21] of the specification and figure 2 recites "the crossover strap 56 extends from one of the panels and in user extends to the other panel by way of passing through opening 62. That is not extending from one of the panels to the other structurally. The applicant would have to amend the claim to read something similar to "extending from one of the contoured panels and adapted to extend to the other" since it doesn't really (not structurally) extend to the other panel.

4. Claims **2-6, 8-11 and 36-41** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 2-6, 8-11 and 36-41 recite "a headpiece" but cannot find support in the drawings/specification for the term. The applicant recites "headgear comprising a headpiece" so they are two distinct structures.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims **13-17, 20, 22, 23, 25-29, 34 and 35** are rejected under 35 U.S.C. 102(b) as being anticipated by Lomas (US 5,542,128).

7. **As to claim 13**, Lomas teaches an apparatus that comprises a patient interface device (**see figure 2**) adapted to fit over a portion of a patient and having a connector element (**see figure 2**); a headpiece; and a connecting strap attached to the headpiece and adapted to releasably connect the headgear to the connector element (**see figure 2**); wherein the headpiece comprise contoured panels (**see figure 3**), each panel including an upper edge having a length and a lower edge having a length, the length of the upper edge is shorter than the length of the lower edge (**see figures 3 and 4**); a rear joining piece positionable along a rear portion of a patient's head; and a front joining piece positionable along a front portion of such a patient's head, wherein each of the contoured panels extend from the rear joining piece to the front joining piece (**see figures 5 and 6**).

8. **As to claims 14 and 26**, Lomas teaches an apparatus wherein the connecting strap is an upper connecting strap attached to the front joining piece and adapted to releasably connect the headgear to the patient interface device (**see figures 5 and 6**).

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9. **As to claims 15 and 27**, Lomas teaches an apparatus that further comprises a lower connecting strap attached to the rear joining piece and adapted to releasably connect the headgear to the patient interface device (**see figure 2**).
10. **As to claims 16 and 28**, Lomas teaches an apparatus wherein the upper and lower connecting straps include hook and loop components for adjustably connecting the headgear to the patient interface device (**see figures 3-6**).
11. **As to claims 17 and 29**, Lomas teaches an apparatus wherein the upper and the lower connecting straps include a loop fastener portion on the exterior thereof and an end portion having a hook tab portion, and wherein each hook tab portion is threaded through the connecting element of the patient interface device and secured to the loop fastener portion (**see figures 3-6**).
12. **As to claim 20**, Lomas teaches an apparatus wherein each of the first and the second contoured panels has an arch shape having an upper edge having a concave curvature and a lower edge having a convex curvature (**see figures 3-6**).
13. **As to claims 22 and 34**, Lomas teaches an apparatus that further comprises a stabilizer attached to the headpiece and adapted to stabilize a conduit connected to the patient interface device (**see figure 2**).
14. **As to claims 23 and 35**, Lomas teaches an apparatus wherein the patient interface device is a nasal mask, a nasal/oral mask or a full face mask (**see figure 2**).
15. **As to claim 25**, Lomas teaches an apparatus that comprises a gas flow generating device that produces a flow of gas (**see figure 2**); a conduit having a first end portion operatively coupled to the gas flow generating device and a second end portion (**see figure 2**), wherein the conduit carries the flow of gas from the gas flow generating device during operation of the

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system; a patient interface device coupled to the second end portion of the conduit; the patient interface device having a connector element; and a headgear comprising a headpiece; and a connecting strap attached to the headpiece and adapted to releasably connect the headgear to the connector element (**see figure 2**); wherein the headpiece comprises a rear joining piece positionable along a rear portion of a patient's head; and a front joining piece positionable along a front portion of such a patient's head (**see figure 2**), and a first contoured panel and a second contoured panel, wherein each of the first and second contoured panels extend from the rear joining piece to the front joining piece, each of the first and second contoured panels including an upper edge having a length and a lower edge having a length, the length of the upper edge is shorter than the length of the lower edge (**see figures 3-6**).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nihir Patel/
Examiner, Art Unit 3772

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772